

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	2:21-cr-00191-KM
	:	
	:	Criminal Action
vs.	:	
	:	
DAVID KUSHNER	:	Electronically Filed
	:	
Defendant.	:	

**NOTICE OF MOTION TO WITHDRAW AS COUNSEL**

Frank Agostino, Esq., counsel to David Kushner in the above-captioned matter, shall move before the Honorable Kevin McNulty, U.S.D.J., at the Martin Luther King, Jr. Federal Bldg. & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey at a date and time to be set by the Court, for an order granting permission to withdraw as counsel to David Kushner.

In support of this request, counsel will rely upon the declaration of Frank Agostino, Esq. submitted simultaneously herewith.

Dated: December 17, 2021

\_\_\_\_\_  
s/ Frank Agostino  
Agostino & Associates, P.C.  
14 Washington Place  
Hackensack, New Jersey 07601  
(201) 488-5400  
Attorneys for Defendant

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Withdraw as Counsel and Supporting Declaration was filed via ECF in the United States District Court for the District of New Jersey and, accordingly, that notice of this filing was served via regular and electronic mail on Mr. Kushner.

Dated: December 17, 2021

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Plaintiff,	:	2:21-cr-00191-KM
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	:	
Defendant.	:	

**DECLARATION OF COUNSEL**

Frank Agostino, Esq., of full age and being duly sworn, hereby declares under penalty of perjury:

1. I am an attorney at law in the State of New Jersey and principal of the law firm of Agostino & Associates, P.C. I am counsel to David Kushner and have been so since May 2, 2017. I am personally familiar with the facts of this case and the facts contained in this Declaration. I make this Declaration in the knowledge that the Court may rely upon it in determining whether to permit my withdrawal as counsel to Mr. Kushner.
2. On March 15, 2021, I entered an appearance as counsel to Mr. Kushner in this matter. I have previously entered into a fee arrangement with Mr. Kushner for representation in this matter.

3. To date, Mr. Kushner has not been able to meet the obligations of the fee agreement and there is no reasonable expectation that he will be able to do so.
4. Representation of Mr. Kushner has required and will continue to require counsel to expend his own funds for disbursements and costs related to preparation and trial.
5. It would be a significant financial hardship for me and my firm to continue to represent Mr. Kushner without any reasonable expectation of payment. Thus, I respectfully request that the Court grant me permission to withdraw as counsel to Mr. Kushner.
6. Additionally, I have had significant difficulty communicating with Mr. Kushner and, as such, have significant differences of opinion on how to proceed with his case.
7. In the event that the Court requires me to expound upon these facts, I respectfully request that the Court permit me to provide such further details *ex parte* and *in camera* so as to not to prejudice Mr. Kushner.

The statements contained herein are true to the best of my knowledge. I am aware that if any of the foregoing is knowingly false, I am subject to punishment.

Dated: December 17, 2021

s/ Frank Agostino  
Agostino & Associates, P.C.  
14 Washington Place  
Hackensack, New Jersey 07601  
(201) 488-5400  
Attorneys for Defendant